

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-222435

DATE: April 4, 1986

MATTER OF: Greishaber Manufacturing Co., Inc.

DIGEST:

GAO dismisses protest as untimely where potential protester fails to diligently seek information that would form the basis for its protest, in that it did not inquire of the contracting agency as to the status of award until almost 4 months after its bid had expired.

Greishaber Manufacturing Co., Inc., has protested the award of a contract to E. Miltenberg Inc. by the Defense Logistics Agency under invitation for bids (IFB) No. DLA120-85-B-2349. Greishaber also claims bid preparation and other costs. The protester argues that its bid for the supply of surgical instruments which it proposed to have manufactured in Pakistan was improperly rejected as nonresponsive to a solicitation clause establishing a preference for domestic specialty metals because the box adjacent to that clause was not checked and the preference, therefore, was not applicable to this procurement.^{1/} The protest and the claim for costs are dismissed.

According to the protester, bids were opened on August 21, 1985, and it subsequently was requested by DLA

^{1/} Beneath the title of the clause, however, the following appears:

"NOTE: All contract awards resulting from this solicitation shall, regardless of dollar amount, be subject to the provisions of [the clause], unless the aggregate amount of all such awards is \$10,000 or less."

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to extend the acceptance period of its bid to October 25, 1985, which it did. On October 25, the protester states, it agreed to further extend its bid until November 20. It received "no information or communication from [DLA] from October 25, 1985 until approximately March 12, 1986" when, in response to an inquiry it made of DLA, it was advised that a contract had been awarded to Miltenberg in December 1985 at a price higher than that bid by the protester. Grieshaber claims never to have received the "Notice to Unsuccessful Bidders" mailed by DLA on December 12, 1985. The protester asserts that its protest is timely since it was filed with our Office within 10 working days of when it became aware of the basis for its protest.

We have been advised by DLA that the contracting officer signed a "Notice to Unsuccessful Offerors" addressed to each of the nine unsuccessful bidders on December 11, which letters were date stamped December 12 and placed in the mail according to the procuring activity's regular procedures. According to DLA, two of those bidders, selected at random, were contacted and they advised that they received the notice on December 18 and 19, respectively. Under these circumstances, DLA asserts that proper notice was given and that the protester has not rebutted the presumption of receipt after proper mailing. Alternatively, the agency is of the opinion that Grieshaber has not diligently pursued its protest.

Even construing the facts most favorably to the protester--i.e., that it did not receive the "Notice to Unsuccessful Offerors"--we think the protest is for dismissal as untimely. Our Bid Protest Regulations, 4 C.F.R. § 21.2 (1985), require protests to be filed within 10 working days after the basis for them is known or should have been known. Further, a protester must diligently pursue the information that forms the basis of a protest and, if it does not do so within a reasonable time, our Office will dismiss the protest as untimely. Daniels & Parks General Contractors, Inc., B-218342, May 10, 1985, 85-1 CPD ¶ 529.

According to the protester, its last communication from DLA concerning this procurement was on October 25, 1985, when it was requested to extend the acceptance period of its bid to November 20. Even though its bid expired on November 20, 1985, Grieshaber made no inquiry of DLA as to the status of the procurement until March 12, 1986, almost 4 months after its bid had expired. In our opinion, waiting almost 4 months after bids have expired does not constitute diligent pursuit.

We dismiss the protest and the claim for bid preparation and other costs.

A handwritten signature in black ink, appearing to read 'R. Strong', is written over the printed name.

Robert M. Strong
Deputy Associate
General Counsel